

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

KEITH W.R. LOWE,

Plaintiff,

v.

Civil Action No. 2:22-cv-000434

SUPERINTENDENT DONALD AMES
and MAJOR RICHARD TONEY,

Defendants.

ORDER

Pending before the court is the Proposed Findings and Recommendation ("PF&R") of United States Magistrate Judge Dwane L. Tinsley, entered on December 7, 2023. ECF No. 28.

The Magistrate Judge recommends denying without prejudice defendants' motion to dismiss, ECF No. 15. See ECF No. 28, at 3-4. The Magistrate Judge further recommends leaving this matter referred to them for further proceedings. Id. at 4

In reviewing a PF&R, the court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Upon the filing of an objection to a PF&R, the court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." Id. Failure to object to a PF&R constitutes waiver of


de novo review, in which case the court reviews the PF&R for clear error. See Fed. R. Civ. P. 73 Advisory Committee notes.

There being no objections to the PF&R, it is ORDERED that the PF&R be, and hereby is, adopted by the court and incorporated herein. It is, therefore, ORDERED as follows:

1. The defendants' motion to dismiss, ECF No. 15, is DENIED without prejudice, and
2. This matter shall remain referred to Magistrate Judge Tinsley for further proceedings.

The Clerk is directed to transmit copies of this order to any unrepresented parties, all counsel of record, and the United States Magistrate Judge.

ENTER: January 16, 2024



John T. Copenhaver, Jr.
Senior United States District Judge